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LIEW KET BOH & ANOR v. PP

COURT OF APPEAL, PUTRAJAYA
NOR BEE ARIFFIN JCA
RAVINTHRAN PARAMAGURU JCA
GHAZALI CHA JCA
B [CRIMINAL APPEAL NO: S-05-185-05-2021]
24 JANUARY 2024

Abstract – *(i) If the seized properties are liquid assets, it becomes a formidable challenge for enforcement authorities to prove the direct correlation of every single cash deposit or transaction in a seized bank account with unlawful activity. However, the broad definition of 'proceeds of unlawful activity' should come to the aid of the Public Prosecutor. If the property in question is an immovable asset purchased using partly proceeds of unlawful activity and partly other legitimate funds, the entire property will be caught by the said broad definition. Any other interpretation will jeopardise the objective of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUAA'), which is aimed at depriving serious crime offenders of their ill-gotten gains; (ii) A holistic reading of all the limbs of s. 113 of the Criminal Procedure Code ('CPC') points to the conclusion that a s. 112 CPC statement is barred from being used by the prosecution in a criminal trial only. A s. 56(1) proceeding under the AMLATFPUAA (as in this case) is not a trial against any accused person. It is a quasi-criminal proceeding against the proceeds derived from unlawful activity only. Furthermore, s. 71 of the AMLATFPUAA is drafted widely and contains the words 'notwithstanding anything to the contrary in any written law'. It allows any 'document' or 'evidence' obtained by the Public Prosecutor or enforcement agency to be used in a s. 56(1) proceeding. In the premises, the information contained in the s. 112 CPC statements recorded by the predicate offence investigating officer clearly falls within the ambit of s. 71 of the AMLATFPUAA.*

CRIMINAL PROCEDURE: *Forfeiture – Proceedings – Application for – Forfeiture of monies in bank accounts – Whether monies seized in accounts linked to illegal investment scheme – Whether assets sought to be forfeited derived from unlawful activity – Whether there was failure to identify which transactions were in respect of proceeds of predicate offence – Whether court could rely on s. 32 of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 statement – Whether court could rely on s. 112 Criminal Procedure Code statements – Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 56(1), 70 & 71 – Penal Code, s. 420*

CRIMINAL LAW: *Money laundering – Forfeiture – Proceedings – Forfeiture of monies in bank accounts – Whether monies seized in accounts linked to illegal investment scheme – Whether assets sought to be forfeited derived from unlawful activity – Whether there was requirement to obtain conviction for money laundering offence under s. 4(1) of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 before instituting forfeiture proceedings – Whether court could rely on s. 32 of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 statement – Whether court could rely on s. 112 Criminal Procedure Code statements – Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 56(1), 70 & 71 – Penal Code, s. 420*

This was an appeal against the decision of the High Court that allowed the application of the Public Prosecutor to forfeit monies in the bank accounts belonging to Liew Ket Boh, Kenny Liew Ket Weng ('Kenny Liew') and two others, namely Centrowest Trading and Sun Construction. The application was made under s. 56(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUAA'). One Ferdinand Fascol complained that he lost the money that he had invested in a scheme initiated by an entity known as Grow Asia Capital Ventures ('Grow Asia'). He had deposited a sum of RM12,000 into a current account under the name of Carousel Capital. Initially, he received a 'return' on his 'investment' but subsequently, the payments ceased, and he was unable to recover his deposit. He lodged a police report stating that he was cheated. The predicate offence investigating officer, Sarjan Zairey Lee ('Sarjan Zairey'), investigated the case under s. 420 of the Penal Code ('PC') and discovered that 29 other complainants had lodged similar police reports in respect of their supposed investments in Grow Asia. The monies of these investors were deposited into the account of Carousel Capital and another account under the name of Grow Asia with CIMB Bank. Sarjan Zairey also discovered that Grow Asia was issued with a business registration licence by the Dewan Bandaran Kota Kinabalu ('DBKK'). It was registered under the name of one Wilton Sikin ('Wilton'). The monies from these two accounts were subsequently transferred to the Ambank account of Centrowest Trading and the Hong Leong Bank account of Sun Construction. The Centrowest Trading and Sun Construction trading licences issued by DBKK were registered in the name of one Muhammad Jazrul Abdul Aziz ('Jazrul'). In his s. 112 of the Criminal Procedure Code ('CPC') statement ('s. 112 statement'), Wilton said that Jazrul wanted to use his name for the trading licence of Grow Asia and promised him a 'commission.' Wilton claimed that he was not aware of any of the transactions in the bank accounts in question as they were managed by Jazrul who even retained control of the ATM cards. In his s. 112 statement, Jazrul explained that towards the end of 2015,

Liew Ket Boh offered him a job and tasked him with registering trading licences and opening bank accounts to avoid tax liability. Jazrul said he convinced two individuals, namely Anirah and Wilton, to allow him to use their names for the said trading licences and bank accounts. Wilton's name was used for Grow Asia's account whereas Anirah's name was used for Carousel Capital's name. Jazrul admitted that although the Ambank account of Centrowest Trading and the Hong Leong Bank account of Sun Construction were registered under his name, all transactions on these accounts were controlled by Liew Ket Boh. Sarjan Zairey also obtained a s. 112 statement from Mariana, who had been working for Liew Ket Boh and claimed that Liew Kiet Boh had instructed her to register a trading licence under his name and open a bank account as well, and to transfer monies in accordance with a list of business entities and bank accounts. Kenny Liew, the second appellant, had also given a s. 112 statement, denying that he was involved in Grow Asia's business or the investment scheme in question. However, Kenny Liew admitted that Liew Ket Boh had requested him to collect cash in the sum of RM400,000 from Jazrul and deposit it into an account number under his name with CIMB Bank, which task he had carried out. In his s. 112 statement, Liew Ket Boh denied any involvement in collecting deposits from investors under the Grow Asia scheme and claimed that he was only running a construction business. He also denied being in control of the accounts of Grow Asia or Carousel Capital. The officer who conducted the money laundering investigation under AMLATFPUAA, one ASP Nor Hazwani Jasman ('ASP Hazwani') found that between July 2018 and December 2018, monies were frequently deposited into these accounts and found, *inter alia*, movement of large sums of money between various bank accounts during the period the 'investors' of the Grow Asia scheme were duped. The Public Prosecutor did not charge anyone with a criminal offence at the conclusion of the investigation. Forfeiture proceedings were instituted instead. In his affidavit to oppose the forfeiture application, Liew Ket Boh denied any involvement in the Grow Asia investment scheme, as stated in his s. 32 AMLATFPUAA statement. He also claimed that he had no link to Centrowest Trading and Sun Construction and that he was not the registered owner. Kenny Liew also denied being involved in the Grow Asia investment scheme and claimed that all the monies in his accounts that were seized were derived from legitimate business and not from unlawful activity. The High Court found that, on a balance of probabilities, the monies seized in the accounts of the appellants, Centrowest and Sun Construction, were linked to an illegal investment scheme in which investors were cheated. The High Court also found that the prosecution need not prove that the appellants committed the predicate offence under s. 420 of the PC but only needed to prove on a balance of probabilities that the assets sought to be forfeited were derived from an unlawful activity. As there was a link between the monies

that were seized in the accounts of Liew Ket Boh and Kenny Liew and the investment scheme and their explanation in respect of the source of the monies was not satisfactory, the High Court found that the prosecution had proved, on a balance of probabilities, that the said monies were proceeds of unlawful activity. Consequently, the application was allowed and all the monies in the seized bank accounts were forfeited. Dissatisfied, the appellants appealed. Counsel for the appellants submitted that: (i) the Public Prosecutor failed to identify which transactions were in respect of the proceeds of the predicate offence; and (ii) the Public Prosecutor failed to prove that his clients committed or abetted or participated in the commission of the predicate offence for two reasons, *ie*, (a) the court could not rely on s. 32 of the AMLATFPUAA statement of Sarjan Zairey; and (b) that the High Court allegedly relied on the s. 112 statements which were hearsay and inadmissible as evidence.

Held (dismissing appeals)
Per Ravinthran Paramaguru JCA delivering the judgment of the court:

(1) In a forfeiture application under s. 56(1) of the AMLATFPUAA, the central question was whether, on a balance of probabilities, the prosecution had proven that the balances in the bank accounts of the appellants were the proceeds of unlawful activity. The Public Prosecutor had tendered cogent evidence to prove this fact. However, it was not necessary to link the monies deposited into the bank accounts of Grow Asia and Carousel Capital by investors to every single transaction in the bank accounts of the appellants. (para 35)

(2) There was evidence that a cheating offence had been committed. This was the predicate offence. Twenty-nine victims lodged police reports and gave s. 112 statements saying that they had been cheated in the Grow Asia investment scheme and that they had lost their investments. Whether they had been cheated or not was a question of fact. Under s. 70 of the AMLATFPUAA, such a question of fact could be decided on a balance of probabilities. The High Court decided that they had been cheated. It was immaterial that the appellants or other individuals were not convicted of the offence of cheating as that was not a pre-condition under s. 56(1) of the AMLATFPUAA. (para 47)

(3) There was no requirement to obtain a conviction for a money laundering offence under s. 4(1) of the AMLATFPUAA against any individual before instituting forfeiture proceedings. Under the broad definition of money laundering, engagement directly or indirectly with proceeds of unlawful activity would be sufficient. And for the purpose of forfeiture proceedings, the standard of proof is the civil standard namely, balance of probabilities. Thus, the flow of the victims' monies into any bank

account was sufficient to prove the existence of the offence of money laundering on a balance of probabilities even though no individual was charged or convicted. (para 48)

(4) The Public Prosecutor had successfully established the offence of cheating based on the statements of the victims involved in the Grow Asia's investment scheme. The appellants have also been implicated on the scheme for the following reason. The monies of the victim were deposited into accounts under the names of Wilton and Anirah, with Jazrul instructing the opening of these accounts. He retained the ATM cards for these accounts, withdrew cash using cheques and subsequently handed over the withdrawn cash to Liew Ket Boh and Kenny Liew. Jazrul was employed by Liew Ket Boh who also gave instructions to Mariana and other employees in his company about the transfer of monies. For this purpose, a list of business entities and bank accounts was given to his employees. Thus, the large sums of monies in the seized accounts of Liew Ket Boh and Kenny Liew were clearly, as found by the High Court on a balance of probabilities, linked to the predicate offence. (para 52)

(5) Since the seized properties in question were liquid assets, it becomes a formidable challenge for enforcement authorities to prove the direct correlation of every single cash deposit or transaction in a seized bank account with the unlawful activity. However, the broad definition of 'proceeds of unlawful activity' should come to the aid of the Public Prosecutor. If the property in question was immovable asset purchased using partly proceeds of unlawful activity and partly other legitimate funds, the entire property would be caught by the said broad definition. Any other interpretation would jeopardise the objective of the AMLATFPUAA, which is aimed at depriving serious crime offenders of their ill-gotten gains. (para 53)

(6) The s. 112 statements of Jazrul, Wilton and Mariana can be used in a s. 56 proceeding for the following reasons. The references in s. 113 are all associated with a criminal trial such as 'accused', 'witness', 'impeachment proceedings' and 'identification parade'. Thus, a holistic reading of all the limbs of s. 113 of the CPC points to the conclusion that a s. 112 statement is barred from being used by the prosecution in a criminal trial only. It bears repeating that a s. 56(1) proceeding under the AMLATFPUAA is not a trial against any accused person. It is a *quasi*-criminal proceeding against proceeds derived from unlawful activity only. (para 60)

(7) Section 71 of the AMLATFPUAA is drafted widely and contains the words 'notwithstanding anything to the contrary in any written law'. It allows any 'document' or 'evidence' obtained by the Public Prosecutor or enforcement agency to be used in a s. 56(1) proceeding. In the instant case, the AMLATFPUAA investigating officer using her powers under the said Act, accessed all the relevant documents and evidence including that obtained by the predicate offence investigating officer. The information collected by the predicate investigating officer through the s. 112 statements of Jazrul and Wilton were repeated in his s. 32 AMLATFPUAA statement. In the premises, the information contained in the s. 112 statements recorded by the predicate offence investigating officer clearly fell within the ambit of s. 71 of the AMLATFPUAA. (para 61)

(8) Given that the AMLATFPUAA is a special law governing matters connected with the offence of money laundering and forfeiture proceedings, the general provision of s. 113 of the CPC should yield to s. 71 of the former. In any event, s. 71 is only concerned with admissibility of documents and evidence. As to the weight to be attached to such documents and evidence, it is entirely up to the first instance court to consider the credibility and reliability of them. Therefore, there was no error on the part of the High Court Judge when His Lordship considered the s. 32 AMLATFPUAA statement and affidavit of the predicate offence investigating officer that repeated the contents of the impugned s. 112 statements. The information contained in the statement of the predicate offence investigating officer (Sarjan Zairey) recorded under s. 32(2) of the AMLATFPUAA by ASP Hazwani that was considered by the High Court was not hearsay. (paras 62 & 65)

Case(s) referred to:

PP v. Awalluddin Sham Bokhari [2018] 1 CLJ 305 FC ***(refd)***
PP v. Billion Nova Sdn Bhd & Ors [2016] 2 CLJ 763 CA ***(dist)***
PP v. CPO Resources & Ors [2019] CLJU 846; [2019] 1 LNS 846 HC ***(refd)***

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 3(1), 4(1)(a), 32(2), 40, 50(1), 56(1), (4), 70, 71
Criminal Procedure Code, ss. 112, 113
Customs Act 1967, s. 135(g)
Penal Code, s. 420

For the appellants - Goldam Hamid; M/s Liau Kee Siong & Co
For the respondent - Zaki Asyraf Zubir; DPP

[Editor's note: Appeal from High Court, Kota Kinabalu; Criminal Application No: BKI-44-20-12-2019 (affirmed).]

Reported by Suhainah Wahiduddin

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JUDGMENT

Ravinthran Paramaguru JCA:

Introduction

[1] This is an appeal against the decision of the High Court that allowed
B the application of the Public Prosecutor to forfeit monies in bank accounts belonging to Liew Ket Boh, Kenny Liew Ket Weng (Kenny Liew) and two others, namely Centrowest Trading and Sun Construction. The application was made under s. 56(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (the AMLATFPUAA).
C Centrowest Trading and Sun Construction did not contest the application of the Public Prosecutor. Liew Ket Boh and Kenny Liew opposed the application. The High Court allowed the application of the Public Prosecutor. Now, Liew Ket Boh and Kenny Liew who were the third and fourth respondents in the High Court have appealed against the forfeiture
D order made against the monies in their seized bank accounts.

Affidavit Evidence Of The Public Prosecutor

[2] The brief background facts summarised from the grounds of decision of the learned High Court Judge and the affidavits filed by the Public
E Prosecutor are as follows.

[3] One Ferdinand Fascol complained that he lost the money that he had invested in a scheme initiated by an entity known as Grow Asia Capital Ventures (Grow Asia). He was led to believe that Grow Asia was involved in the business of exporting durians to China. He deposited a sum of
F RM12,000 into a current account under the name of Carousel Capital. Initially, he received a "return" on his "investment" but subsequently, the payments ceased and he was unable to recover his deposit. He lodged a police report stating that he was cheated.

[4] The police officer appointed to investigate the police report was Sarjan
G Zairey Lee. He is the predicate offence investigating officer. He investigated the case under s. 420 of the Penal Code. The Public Prosecutor did not charge anyone with a criminal offence at the conclusion of the investigation. Forfeiture proceedings were instituted instead.

[5] Sarjan Zairey Lee filed a lengthy affidavit to support the forfeiture
H application. Sarjan Zairey Lee confirmed in his affidavit that Ferdinand Fascol deposited RM12,000 on 9 November 2018 into a numbered account with CIMB Bank Berhad under the name of Carousel Capital. Ferdinand was promised a daily return of RM720 for a period of 78 days for his investment of RM12,000. However, Ferdinand only received a total of RM3,600 for the
I period 12 November 2018 to 15 November 2018. He did not receive the promised returns or the balance of his deposit.

[6] Sarjan Zairey Lee also discovered that 29 other complainants had lodged similar police reports in respect of their supposed investments in Grow Asia. The said complainants' police reports are exhibited in the affidavit of Sarjan Zairey Lee. The monies of these investors were deposited into the account of Carousel Capital and another account under the name of Grow Asia with CIMB bank. Sarjan Zairey Lee discovered that the bank accounts of Carousel Capital and Grow Asia received deposits of various sums of money from "investors" during the second half of 2018.

[7] Sarjan Zairey Lee also discovered that Grow Asia was issued with a business registration licence by the Dewan Bandaran Kota Kinabalu (DBKK). It was registered under the name of one Wilton Sikin (Wilton). The monies from these two accounts were subsequently transferred to the Ambank account of Centrowest Trading and the Hong Leong Bank account of Sun Construction. On the same day, *ie*, 30 November 2018, the CIMB accounts of Carousel Capital and Grow Asia were closed.

[8] The Centrowest Trading and Sun Construction trading licenses issued by DBKK were registered in the name of Muhammad Jazrul bin Abdul Aziz (Jazrul). In his s. 112 of the Criminal Procedure Code (CPC) statement, Wilton said that Jazrul wanted to use his name for the trading licence of Grow Asia and promised him a "commission". The apparent reason for using Wilton's name was to shield Jazrul's employer from being accountable for tax liabilities related to a road project awarded to his company. Wilton further claimed he was not aware of any of the transactions in the bank accounts in question as they were managed by Jazrul, who even retained control of the ATM cards. Armed with this information, Sarjan Zairey Lee proceeded to investigate Jazrul.

[9] In his s. 112 of the CPC statement, Jazrul explained that towards the end of 2015, Liew Ket Boh offered him a job and tasked him with registering trading licences and opening bank accounts to avoid tax liability. Jazrul said he convinced two individuals, namely, Anirah and Wilton to allow him to use their names for the said trading licenses and bank accounts. Wilton's name was used for Grow Asia's account whereas Anirah's name was used for Carousel Capital's name. However, Sarjan Zairey Lee was unable to locate Anirah during the investigation.

[10] Jazrul said the registration of the trading licences was arranged by Mariana binti Amat Alan under the instructions of Liew Ket Boh. Jazrul admitted that the Ambank account of Centrowest Trading and the Hong Leong Bank account of Sun Construction were registered under his name. However, he said that all transactions on these accounts were controlled by Liew Ket Boh. Jazrul's involvement was limited to instances when he visited the bank for cash withdrawals. On these occasions, the withdrawn cash was

later handed over to Liew Ket Boh and Kenny Liew. Jazrul also admitted that he had requested Wilton to sign cheques for the purpose of withdrawing cash from Grow Asia's account in CIMB Bank. The cash was subsequently handed over to Liew Ket Boh.

[11] Sarjan Zairey Lee also obtained a s. 112 of the CPC statement from Mariana, who had been working for Liew Ket Boh since 2016 with a monthly salary of RM1,200. She corroborated Jazrul's claim that Liew Ket Boh instructed her to register a trading licence under his name and open a bank account as well. She was later instructed by Liew Ket Boh to transfer monies in accordance with a list of business entities and bank accounts. Nine other employees were given the same task. However, she was asked to cease performing that task in November of 2018.

[12] Sarjan Zairey Lee continued his investigation by taking a s. 112 of the CPC statement from Kenny Liew, the second appellant herein. Kenny Liew said that Liew Ket Boh, also known as Ryan, is his cousin. He denied being involved in Grow Asia's business or the investment scheme in question. However, he admitted to the following in his statement. In November of 2018, Liew Ket Boh requested him to collect cash in the sum of RM400,000 from Jazrul and deposit it into an account under his name with CIMB bank. Kenny Liew carried out the said task for Liew Ket Boh.

[13] In his s. 112 of the CPC statement, Liew Ket Boh denied any involvement in collecting deposits from investors under the Grow Asia scheme. He said that he was only running a construction business. He also denied being in control of the accounts of Grow Asia or Carousel Capital.

[14] The prosecution also relied on the affidavit of ASP Nor Hazwani binti Jasman to support the forfeiture application. She was the officer who conducted the money laundering investigation under the AMLATFPUAA. She accessed and studied all relevant documents including the statements of the bank accounts of Carousel Capital and Grow Asia.

[15] She found that between July of 2018 and December of 2018, monies were frequently deposited into these accounts. She also examined the transactions between these bank accounts and the bank accounts of Centrowest Trading and Sun Construction. The Ambank account of Centrowest Trading was only opened on 12 October 2018. However, soon after that, a total sum of RM8,162,532.82 was transferred from the CIMB account of Carousel Capital and credited to the Ambank account of Centrowest in a series of 45 transactions. Additionally, RM3,256,998 was transferred from the CIMB account of Grow Asia into the same Ambank account in a series of 18 transactions.

[16] ASP Hazwani also meticulously examined the Hong Leong Bank account of Sun Construction in connection to the account of Carousel Capital. The account was only opened on 8 October 2018. However, RM3,456,359 was transferred from the account of Carousel Capital and credited to the account of Sun Construction in a series of 18 transactions. Only RM18,066.32 remained in the account of Carousel Capital. A sum of RM2,701,675 was also transferred from the bank account of Grow Asia and credited to the same account in a series of 11 transactions. Only RM22,210.50 remained in the account of Grow Asia. ASP Hazwani noted that most of the monies in the accounts of Centrowest and Sun Construction were withdrawn through cash transactions.

[17] ASP Hazwani proceeded to investigate the bank accounts of Liew Ket Boh and Kenny Liew. The MBB Account 51014365497 of Liew Ket Boh was opened on 8 July 2015. She noted two transactions involving cash between 25 October 2018 and 1 November 2018. A cash sum of RM40,000 and RM240,000 was deposited into this account during the said period. The customer service officer of the MBB Karamunsing branch in Kota Kinabalu confirmed that Liew Ket Boh personally deposited RM240,000 in cash into the said account on 1 November 2018. The balance at the time of seizure of the account under s. 50(1) of the AMLATFPUAA by the Public Prosecutor was RM134,217.11.

[18] The CIMB bank Fixed Deposit Account 50044655333 of Liew Ket Boh was opened on 24 October 2018 which was during the period that the victims of the Grow Asia scheme were depositing monies into the bank accounts registered in the name of Wilton and Anirah. RM200,000 was transferred to this fixed deposit account on the same day from the CIMB Current Account 8009653108 of Liew Ket Boh. On 1 November 2018, RM315,000 was transferred to the same fixed deposit account from the CIMB Current Account 2589 of Liew Ket Boh. The remaining balance in the CIMB bank Fixed Deposit Account 50044655333 when it was seized under s. 50(1) of the AMLATFPUAA was RM515,000.

[19] ASP Hazwani also investigated CIMB Current Accounts belonging to Liew Ket Boh from which monies were transferred to his CIMB bank fixed deposit account 50044655333. He discovered that a cash sum of RM420,000 was deposited over the counter into CIMB Current Account 80081222589 on 1 November 2018. The balance in that current account prior to the said huge cash injection was only RM1,818.58. As stated earlier, on the same day, a sum of RM315,000 was transferred from that current account to fixed deposit account 50044655333 CIMB bank. At the date of the seizure of CIMB Current Account 80081222589, the remaining balance was RM106,804.24.

[20] In respect of CIMB Current Account 8009653108, ASP Hazwani noted that it was opened on 24 October 2018 with an over-the-counter cash deposit of RM160,000. On the same date, RM91,000 was transferred into this account from CIMB Current Account 8602170656 which also belonged to Liew Ket Boh. A sum of RM200,000 was then transferred from CIMB Current Account 8009653108 to the CIMB Fixed Deposit Account 5333 of Liew Ket Boh. At the date of seizure, the balance in CIMB Current Account 8009653108 was RM51,068.09. The remaining balance in CIMB Current Account 8009653108 that was seized was RM80,311.10.

[21] The explanation that Liew Ket Boh gave in his statement recorded under s. 32 of the AMLATFPUAA for abovementioned deposits in his bank accounts and the related cash transactions is that he received the said monies in his capacity as a broker for real estate purchasers from investors. However, he failed to refer to any specific sale and purchase transactions.

[22] ASP Hazwani also investigated the personal bank accounts of Kenny Liew. It must be recalled that in his statement, Kenny Liew had only admitted to collecting a cash sum of RM400,000 from Jazrul and depositing it into Liew Ket Boh's bank account. However, ASP Hazwani found movement of large sums of money between various bank accounts of Kenny Liew during the period the "investors" of the Grow Asia scheme were duped.

[23] Kenny Liew had opened CIMB Current Account 8009657699 on 25 October 2018. A sum of RM329,147.00 was transferred to this account from his CIMB Savings Account 7061229385. Thereafter, RM150,000 each were transferred to his CIMB Fixed Deposit Account 5006962359 and CIMB Fixed Deposit Account 5800744150. The balance remaining in the abovementioned accounts of Kenny Liew at the time of seizure under s. 50(1) of the AMLATFPUAA are as follows. In CIMB Fixed Deposit Accounts 5006962359 and 5800744150 there was RM150,000 each. In Current Account 8009657699 there was RM36,264.46 whereas in CIMB Savings Account 7061229385 there was RM57,195.26.

Affidavit Evidence Of Liew Ket Boh And Kenny Liew

[24] In his affidavit to oppose the forfeiture application, Liew Ket Boh denied any involvement in the Grow Asia investment scheme, as stated in his s. 32 of the AMLATFPUAA statement. He said he has no link to Sun Construction and that he is not the registered owner. He said that Jazrul had falsely accused him during police investigation to escape prosecution. He also denied giving instructions to Mariana to transfer funds to various accounts according to a list supplied by him. He said that Sarjan Zairey Lee acted in bad faith by linking him to the Grow Asia Scheme to cheat investors. He contended that the RM400,000 that was deposited into his bank account

was his commission from a successful sale of a property. However, he did not exhibit any supporting documents. He said that monies that were seized also represented his earnings from positions he held in his family companies. He said that the AMLATFPUAA investigation officer, *ie*, ASP Hazwani acted in bad faith during investigations.

[25] Kenny Liew also denied being involved in the Grow Asia investment scheme. He had no interest in Centrowest Trading or Sun Construction. He said that the transactions in his accounts were for the purpose of his business and private matters. He said his family company by the name of All Master Express Sdn Bhd was involved in marketing the "Amelia" brand ice cream throughout Sabah. All the monies in his accounts that were seized were derived from legitimate business and are not derived from unlawful activity.

Decision Of High Court

[26] The evidence collected by the predicate investigating officer (Sarjan Zairey Lee) in the form of statements recorded under s. 112 of the CPC from all the complainants and from Wilton, Jazrul, Mariana, Liew Ket Boh and Kenny Liew was before the learned High Court Judge. An objection was taken to the s. 112 of the CPC statements by their counsel on the ground that it is not allowed by s. 113 of the Criminal Procedure Code. The High Court case of *PP v. CPO Resources and Others* [2019] CLJU 846; [2019] 1 LNS 846 was cited in support. However, the learned High Court Judge noted that the prosecution also adduced a statement given by Sarjan Zairey Lee under s. 32 of the AMLATFPUAA. The contents of the s. 112 of the CPC statements of the witnesses that Sarjan Zairey Lee interviewed for the predicate offence were repeated in that statement. In addition, as we stated earlier Sarjan Zairey Lee also affirmed an affidavit in which he repeated the evidence he gathered in the s. 112 of the CPC statements.

[27] Based on the above evidence, the learned High Court Judge found as follows. The unsuspecting investors made numerous deposits into the bank accounts of two entities that held trading licences: Grow Asia and Carousel Capital. Grow Asia was registered under the name of Wilton. Subsequently, the monies were transferred to the bank accounts of Centrowest and Sun Construction that also held trading licences registered under the name of Jazrul. The monies of the depositors flowed into these two accounts. Jazrul said that the two accounts were actually controlled by Liew Ket Boh under whose instruction he acted. The learned High Court Judge also noted that Kenny Liew admitted collecting a sum of RM400,000 from Jazrul to be deposited into Liew Ket Boh's bank account. The learned High Court Judge was satisfied that Sarjan Zairey Lee, the predicate offence investigating officer and ASP Hazwani, the AMLATFPUAA investigating officer had

carried out a careful investigation. The learned High Court Judge made a finding on a balance of probabilities that the monies seized in the accounts of the appellants, Centrowest and Sun Construction are linked to an illegal investment scheme in which investors were cheated.

[28] The learned High Court Judge also gave careful consideration to the explanations of Liew Ket Boh and Kenny Liew in their affidavits in reply. Liew Ket Boh said that the huge sums of money that were seized in his bank accounts represented his earnings and his real estate dealings. The learned High Court Judge rejected the explanation as no details were given to support the said assertion. He rejected a similar explanation from Kenny Liew as well for the same reason.

[29] His Lordship directed himself that the prosecution need not prove that the appellants committed the predicate offence under s. 420 of the Penal Code but only need to prove on a balance of probabilities that the assets sought to be forfeited are derived from unlawful activity. As there was a link between the monies that were seized in the accounts of Liew Ket Boh and Kenny Liew and the investment scheme and their explanation in respect of the source of the monies was not satisfactory, the learned High Court Judge found that the prosecution had proved on a balance of probabilities that the said monies are proceeds of unlawful activity. Consequently, the application was allowed and all the monies in seized bank accounts were forfeited.

Issues

[30] Liew Ket Boh and Kenny Liew were represented by the same counsel. He raised the following commons issues on behalf of both:

(i) that the Public Prosecutor failed to identify which transactions are in respect of the proceeds of the predicate offence; and

(ii) that the Public Prosecutor had failed to prove that his clients committed or abetted or participated in the commission of the predicate offence for two reasons. The first reason is that the court cannot rely on the s. 32 of the AMLATFPUAA statement of Sarjan Zairey Lee. The second reason is that the High Court allegedly relied on the s. 112 of the CPC statements which are hearsay and inadmissible evidence.

Identification Of Monies Or Transactions

[31] The counsel for the appellants submitted that the respondent failed to prove that the monies seized were derived from unlawful activity, *ie*, the predicate offence of cheating under s. 420 of the Penal Code. He cited the following passage from the judgment of the High Court and criticised it on the ground that it was unclear which transactions in the bank accounts were linked to the predicate offence. The passage is as follows:

> As for statements by ASP Hazwani in her Affidavit which was relied by the applicant to support the application. It was obvious she has checked the details and the transaction of the monies in the account and concluded that the proceeds were from the predicate offence was deposited into various account that are the subject matter of the present application.

[32] The counsel for the appellants then submitted that the respondent failed to demonstrate the money trail between the predicate offence and the bank accounts of the appellants. He also argued that the respondent must point out the "exact transactions" on the bank statements of the appellants that were derived from the proceeds of the predicate offence.

[33] We shall now address the issue whether there is a duty on the part of the respondent to prove that the "exact transactions" on the bank statements of the appellants were the "exact" amounts of monies derived from unlawful activity.

[34] In the instant case, the predicate offence was cheating under s. 420 of the Penal Code. The general public were lured into investing in a fraudulent investment scheme with the promise of high returns. While numerous investors participated in the scheme, only 29 of them filed police reports. From the evidence that we summarised earlier, the total sum of deposits made by the investors amounted to millions of ringgits as evidenced by the bank statements Grow Asia and Carousel Capital.

[35] In a forfeiture application under s. 56(1) of the AMLATFPUA, the central question is whether, on a balance of probabilities, the prosecution has proven that the balances in the bank accounts of the appellants are the proceeds of unlawful activity. We find that the Public Prosecutor had tendered cogent evidence to prove this fact. However, in our opinion, it is not necessary to link the monies deposited into the bank accounts of Grow Asia and Carousel Capital by investors to every single transaction in the bank accounts of the appellants. This is what counsel for the appellants suggested that should have been done by the Public Prosecutor. He argued that the Public Prosecutor failed to prove that the "exact transactions" on the bank accounts of the appellant were linked to the unlawful activity.

[36] We find that the authority cited for the said proposition by counsel for the appellants, *ie*, the Court of Appeal case of *PP v. Billion Nova Sdn Bhd & Ors* [2016] 2 CLJ 763; [2016] 4 MLRA 226 is distinguishable on the facts. Furthermore, we are of the view that the said authority does not impose an onerous duty on the Public Prosecutor to prove the direct relationship of every transaction in a bank account to the unlawful activity in question.

[37] But before we consider the facts of the *Billion Nova* case and its applicability to the instant case, for the sake of context, we shall briefly discuss the forfeiture regime set out in the AMLATFPUAA in cases where no prosecution is instituted by the Public Prosecutor as is the situation in this case.

Forfeiture Scheme Under The AMLATFPUAA

[38] Under s. 56(1) of the AMLATFPUAA, if there is no prosecution, the respondent can apply for forfeiture of immovable or movable properties on the ground that it had been obtained as a result of or in connection with an offence under subs. 4(1) of the AMLATFPUAA. Section 56 read as follows:

> (1) Subject to section 61, where in respect of any property frozen or seized under this Act there is no applicant or conviction for an offence under subsection 4(1) or a terrorism financing offence, the Public Prosecutor may, before the expiration of twelve months from the date of the freeze or seizure, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property had been obtained as a result of or in connection with an offence under subsection 4(1) or a terrorism financing offence, as the case may be, or is terrorist property.
>
> (2) The judge to whom an application is made under subsection (1) shall make an order for the forfeiture of the property if he is satisfied:
>
> (a) that the property is the subject-matter of or was used in the commission of an offence under sub-section 4(1) or a terrorism financing offence or is terrorist property; and
>
> (b) that there is no purchaser in good faith for valuable consideration in respect of the property.
>
> (3) Any property that has been seized and in respect of which no application is made under subsection (1) shall, at the expiration of twelve months from the date of its seizure, be released to the person from whom it was seized.
>
> (4) **In determining whether or not the property has been obtained as a result of or in connection with an offence** under subsection 4(1) or a terrorism financing offence or is terrorist property, **the court shall apply the standard of proof required in civil proceedings.**
>
> (emphasis added)

Section 4(1)(a) of the AMLATFPUAA, in part, reads as follows:

> Any person who:
>
> (a) engages in, or attempts to engage in; or
>
> (b) abets the commission of,
>
> money laundering, commits an offence and shall on conviction be liable to a fine not exceeding RM5 million or to imprisonment for a term not exceeding five years or to both.

[39] In s. 3(1), "money laundering" means the act of a person who:

> (a) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;

"Unlawful activity" is defined in s. 3(1) as:

> any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence.

As for "serious offence", in the same definition section, it means:

> (a) any of the offences specified in the Second Schedule;

In the Second Schedule, the offence of cheating under s. 420 of the Penal Code is included as a serious offence.

[40] We must also point out that under s. 56(1) of the AMLATFPUAA, it is plain that there is no requirement on the part of the respondent to obtain a conviction against the owner of the property or anyone else for a money laundering offence or terrorism offence in order to apply for forfeiture. A s. 56(1) proceeding is against property and not any individual. It is for this reason that s. 61 of the AMLATFPUAA contains a provision for *bona fide* third parties to come forward to stake their claim to the seized property. In the instant case, no third parties came forward. The appellants herein are owners of the seized bank accounts.

[41] The burden to prove that the monies in the bank accounts of the appellants were derived from unlawful activity is on the Public Prosecutor as the applicant. However, the standard of proof is the civil standard, *ie*, on a balance of probabilities as stated in s. 56(4). Furthermore, s. 70 says that any question of fact in proceedings under the AMLATFPUAA, apart from proceedings to prove an offence, shall be decided on a balance of probabilities.

The Billion Nova Case

[42] We shall turn to the *Billion Nova* case that was heavily relied upon by counsel for the appellants to argue that the monies in the accounts were not exactly identified as the monies that were derived from the unlawful activity in question, *ie*, the offence of cheating committed through the fraudulent Grow Asia investment scheme.

[43] The facts of the *Billion Nova* case are significantly different. There was no individual victim of the predicate offence in that case. Thus, no victim gave a s. 112 of the CPC statement. It was the public purse that was the alleged victim as the predicate offence that was investigated was customs duty evasion under s. 135(g) of the Customs Act 1967. It is an offence listed in the Second Schedule of the AMLATFPUAA.

[44] Billion Nova Sdn Bhd was based in the Federal Territory of Labuan which is a duty-free zone. It was allowed to sell duty-free cigarettes and liquor only in Labuan. The accusation against Billion Nova Sdn Bhd was that it sold dutiable items outside of Labuan, namely Miri and Kota Kinabalu without payment of export duty. However, the investigation was not based on evidence of smuggled goods on which customs duty was not paid. Goods on which duty were not paid were not seized from Billion Nova Sdn Bhd while in transit out of Labuan. The investigation was based on purely on documentary evidence. The evidence uncovered during the investigation was that 82 cash deposits were made into 24 bank accounts of Billion Nova Sdn Bhd in Labuan from Miri and Kota Kinabalu. The investigating officer could not find a corresponding bookkeeping entry evidencing sale of goods in relation to the 82 cash deposits in the standard ledger book of Billion Nova. The Court of Appeal held that even if the 82 deposits were stated as cash sales for cigarettes in the standard ledger, it would be insufficient to conclude that an offence under s. 135(g) of the Customs Act 1967 had been committed without evidence of a sale transaction in both locations, in Miri and Kota Kinabalu. The Court of Appeal also observed that there was no evidence of transportation of the cigarettes to Miri and Kota Kinabalu and that nothing in the law prohibits payment to be made for goods purchased in Labuan from Miri or Kota Kinabalu. Thus, the case for the existence of the predicate offence wholly hinged on the evidence that payments were made from outside a duty-free zone to a supplier who is based within a duty-free zone. Both the High Court and Court of Appeal found that this was not sufficient.

[45] However, counsel for the appellants in the instant case cited the abovementioned case to argue that the AMLATFPUAA investigating officer never pointed out the "exact transactions on the bank statements of the first appellant's accounts allegedly derived from the proceeds of the predicate offence". In support, he cited para. [30] of the judgment in the *Billion Nova* case which reads as follows:

> *Thus, save for their mere averment* in the affidavits on the 82 cash deposits amounting to RM2,675,090, the appellant failed to prove that the remaining cash deposits were actually in respect of the cash sales of duty free cigarettes. The entries in the Labuan account merely indicate payments from Miri and Kota Kinabalu. *Standing on its own,* these entries in the Labuan account, without proof of corresponding entries in the standard ledger book, do not show that the cash deposits were indeed in respect of the cash sales for cigarettes. We are in no position to identify which entries in these documentary exhibits are in respect of the 82 cash deposits stated in the second affidavit save for the 16 cash deposits earlier-mentioned. It would not be sufficient for the appellant to persuade the court to accept these sums with the argument urged on its behalf that we should draw a conclusion that these were cash deposits in respect of

> cash sales of duty free cigarettes outside Labuan when there was a serious and glaring omission on their part to show the court these relevant entries. In any event, even assuming that all the 82 cash deposits were stated as cash sales for cigarettes in the standard ledger book, this is still insufficient to prove that the cigarettes were sold in Miri and Kota Kinabalu in the absence of any evidence of such sale transactions in both locations. If there is no such evidence, then surely the appellant could not expect the court to hazard a guess that these sums were in fact the proceeds of the respondents' unlawful activity for this in our view would tantamount to sheer speculation. (emphasis added)

[46] In our view, the above-mentioned passage does not support the argument canvassed by counsel for the appellants. As we said earlier, in the *Billion Nova* case, the entire case for the existence of the predicate offence was based on the 82 cash deposits made from outside of Labuan into the accounts of the company. There was no other evidence of the predicate offence. This is the reason that the Court of Appeal said that "mere averment in the affidavits on the 82 cash deposits" is not enough. For the same reason, the Court of Appeal also said that "standing on its own", the entries in the bank accounts without proof of corresponding entries in the standard ledger book cannot show that the deposits were in respect of cash sales of cigarettes. Thus, no evidence of the predicate offence was presented.

[47] However, in the instant case, there is evidence that a cheating offence had been committed. This is the predicate offence. Twenty-nine victims lodged police reports and gave s. 112 of the CPC statements saying that they had been cheated in the Grow Asia investment scheme and that they had lost their investment. Whether they had been cheated or not is question of fact. Under s. 70 of the AMLATFPUAA, such a question of fact can be decided on a balance of probabilities. The High Court decided that they had been cheated. It is immaterial that the appellants or other individuals were not convicted of the offence of cheating as that is not a pre-condition under s. 56(1) of the AMLATFPUAA.

[48] Similarly, as we said earlier, there is no requirement to obtain a conviction for a money laundering offence under s. 4(1) of the AMLATFPUAA against any individual before instituting forfeiture proceedings. Under the broad definition of money laundering, any engagement directly or indirectly with proceeds of unlawful activity would be sufficient. And for the purpose of forfeiture proceedings, the standard of proof is the civil standard namely, balance of probabilities. Thus, the flow of the victims' monies into any bank account is sufficient to prove the existence of the offence of money laundering on a balance of probabilities even though no individual was charged or convicted. This fact was clearly proven by the Public Prosecutor as found by the High Court.

[49] We are of the view that the argument of counsel for the appellants that all the "exact transactions" on the bank accounts must be linked to the unlawful activity is not envisaged in the AMLATFPUAA.

[50] "Proceeds of unlawful activity" is defined in s. 3(1) as any property, any economic advantage or economic gain from such property, within or outside Malaysia:

> (a) which is wholly or partly:
>
> (i) derived or obtained, directly or indirectly, by any person from any unlawful activity;
>
> (ii) derived or obtained from a disposal or other dealings with the property referred to in subparagraph (i); or
>
> (iii) acquired using the property derived or obtained by any person through any disposal or other dealings referred to in subparagraph (i) or (ii); or
>
> (b) which, wholly or partly, *due to any circumstances such as its nature, value, location or place of discovery*, or to the time, manner or place of its acquisition, or the person from whom it was acquired, or *its proximity to other property referred to in subparagraph (a)(i), (ii) or (iii), can be reasonably believed to be property falling within the scope of subparagraph (a)(i), (ii) or (iii)*; (emphasis added)

[51] A careful reading of para. (b) would support the proposition that any property found together with property derived from unlawful property as defined in para. (a) can also be "reasonably" considered as proceeds of unlawful property if certain conditions are present.

[52] In the instant case, the Public Prosecutor has successfully established the offence of cheating based on the statements of the victims involved in the Grow Asia's investment scheme. The appellants have also been implicated on the scheme for the following reason. The monies of the victim were deposited into accounts under the names of Wilton and Anirah, with Jazrul instructing the opening of these accounts. He retained the ATM cards for these accounts, withdrew cash using cheques and subsequently handed over the withdrawn cash to Liew Ket Boh and Kenny Liew. Jazrul was employed by Liew Ket Boh who also gave instructions to Mariana and other employees in his company about the transfer of monies. For this purpose, a list of business entities and bank accounts was given to his employees. Thus, the large sums of monies in the seized accounts of Liew Ket Boh and Kenny Liew are clearly, as found by the High Court on a balance of probabilities, linked to the predicate offence.

[53] Since the seized properties in question are liquid assets, it becomes a formidable challenge for enforcement authorities to prove the direct correlation of every single cash deposit or transaction in a seized bank

account with the unlawful activity. However, in our view, the broad definition of "proceeds of unlawful activity" should come to the aid of the Public Prosecutor. Drawing an analogy, if the property in question is an immovable asset purchased using partly proceeds of unlawful activity and partly other legitimate funds, the entire property would be caught by the said broad definition. Any other interpretation would jeopardise the objective of the AMLATFPUAA, which is aimed at depriving serious crime offenders of their ill-gotten gains.

[54] For the above reasons, we find no merit in the first issue raised on behalf of both appellants.

Admissibility Of s. 112 Of The CPC Statements

[55] The second issue argued by counsel for the appellant is that all the s. 112 of the CPC statements, in particular the statements of Wilton and Jazrul, that was recorded by the predicate offence investigating officer cannot used in a s. 56(1) application. This argument was accepted by the learned High Court Judge. However, His Lordship relied on the statement of the predicate offence investigating officer that was recorded under s. 32 of the AMLATFPUAA. Counsel for the appellant submitted the section 32 AMLATFPUAA statement is based on information derived from the s. 112 of the CPC statements of Wilton and Jazrul. Therefore, according to counsel, the s. 32 statement of the predicate offence investigating officer that was recorded by the AMLATFPUAA investigating officer cannot be relied upon. It follows that there is no evidence of the involvement of the appellants in the Grow Asia scheme.

[56] We shall first consider the argument that s. 112 of the CPC statements cannot be used in a proceeding under s. 56(1) of the AMLATFPUAA. The argument is based on s. 113 of the CPC. Section 113 reads as follows:

> (1) Except as provided in this section, *no statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be used in evidence.*
>
> (2) *When any witness is called for the prosecution or for the defence, other than the accused,* the court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to a police officer in the course of a police investigation under this Chapter and may then, if the court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [Act 56].
>
> (3) Where the accused had made a statement during the course of a police investigation, *such statement may be admitted in evidence in support of his defence during the course of the trial.*

A (4) Nothing in this section shall be deemed to apply to any statement made in the course of an *identification parade* or falling within section 27 or paragraphs 32(1)(a), (i) and (j) of the Evidence Act 1950.

(5) When any person *is charged with any offence* in relation to:

(a) the making; or

B (b) the contents,

of any statement made by him to a police officer in the course of a police investigation made under this Chapter, *that statement may be used as evidence in the prosecution's case.* (emphasis added)

C **[57]** On the other hand, learned Deputy Prosecutor argued that the s. 112 of the CPC statements are admissible under s. 71 of the AMLATFPUAA. Section 71 reads as follows:

Where the Public Prosecutor or any enforcement agency has obtained any document or other evidence in exercise of his powers under this Act or D by virtue of this Act, such document or copy of the document or other evidence, as the case may be, shall be admissible in evidence in any proceedings under this Act, **notwithstanding anything to the contrary in any written law.** (emphasis added)

[58] The same issue arose in the High Court case of *PP v. CPO Resources* E *& Ors* (*supra*). In that case, the learned High Court Judge disallowed the s. 112 of the CPC statements. His Lordship's reasons are found in the following passages of the judgment:

[57] It is clear from a reading of section 113 that a statement taken under section 112 can be used to impeach the credibility of a witness other than F an accused person. However, an accused himself may utilize his statement in support of his defence.

[58] The intent of section 113 is thus obvious. To hold otherwise as contended by the Applicant would be to render admissible through the back door what has been prohibited through the front door.

G [59] Further, if the statement made the accused under section 112 of the CPC is allowed to be used under the AMLA, it would be manifestly unfair if such statement was made under threat, inducement or promise and thus involuntary as there does not exist any mechanism for determining the voluntariness or otherwise of the statement in the AMLA proceedings.

H

[60] I therefore find that the phrase "evidence" in s. 68(2) of AMLA does not include a statement taken under section 112 of the CPC. I also find that the phrase "under this Act or by virtue of this Act" in s. 71 of AMLA is confined to that Act alone *ie*, AMLA and does not extend to cover the provisions of the CPC.

I

[61] The Applicant therefore cannot rely upon the statements of the Respondents taken pursuant to section 112 of the CPC in order to prove the case.

[59] The learned High Court Judge in the instant case followed the abovementioned authority and did not consider the s. 112 of the CPC statements. However, His Lordship considered the s. 32 of the AMLATFPUAA statement and the affidavit of the predicate offence investigating officer in which he repeated the contents of the s. 112 of the CPC statements that he recorded.

[60] In our respectful view, the s. 112 of the CPC statements of Jazrul, Wilton and Mariana can be used in a s. 56 proceedings for the following reasons. The references in s. 113 are all associated with a criminal trial such as "accused", "witness", "impeachment proceedings" and "identification parade". Thus, a holistic reading of all the limbs of s. 113 of the CPC points to the conclusion that a s. 112 of the CPC statement is barred from being used by the prosecution in a criminal trial only. It bears repeating that a s. 56(1) proceeding under the AMLATFPUAA is not a trial against any accused person. It is a *quasi*-criminal proceeding against proceeds derived from unlawful activity only.

[61] Furthermore, s. 71 of the AMLATFPUAA is drafted widely and contains the words "notwithstanding anything to the contrary in any written law. It allows any "document" or "evidence" obtained by the Public Prosecutor or enforcement agency to be used in a s. 56(1) proceeding. In the instant case, the AMLATFPUAA investigating officer using her powers under the said Act, accessed all the relevant documents and evidence including that obtained by the predicate offence investigating officer as stated in her affidavit. The information collected by the predicate investigating officer through the s. 112 of the CPC statements of Jazrul and Wilton were repeated in his s. 32 of the AMLATFPUAA statement. In the premises, in our view, the information contained in the s. 112 of the CPC statements recorded by the predicate offence investigating officer clearly fall within the ambit of s. 71 of the AMLATFPUAA.

[62] In addition, given that the AMLATFPUAA is a special law governing matters connected with the offence of money laundering and forfeiture proceedings, the general provision of s. 113 of the CPC should yield to s. 71 of the former. In any event, s. 71 is only concerned with admissibility of documents and evidence. As to the weight to be attached to such documents and evidence, it entirely up to the first instance court to consider the credibility and reliability of them. Therefore, we find no error on the part of the learned High Court Judge when His Lordship considered the s. 32 AMLATFPUAA statement and affidavit of the predicate offence investigating officer that repeated the contents of the impugned s. 112 of the CPC statements.

[63] We are also fortified in reaching this conclusion by the decision in the Federal Court case of *PP v. Awalluddin Sham Bokhari* [2018] 1 CLJ 305. The Federal Court considered s. 40 of the AMLATFPUAA which reads as follows:

> 40. Statement to be Admissible
>
> The record of an examination under paragraph 32(2)(a), any property, document or information produced under paragraph 32(2)(b) or any statement under paragraph 32(2)(c) shall, notwithstanding any written law or rule of law to the contrary, be admissible as evidence in any proceedings in any court for, or in relation to, an offence or any other matter under this Act or any offence under any other written law, regardless whether such proceedings are against the person who was examined, or who produced the property, document or information, or who made the written statement on oath or affirmation, or against any other person.

[64] The Federal Court held that any statement of police officers under s. 32(2) is not hearsay by virtue of s. 40 as it was acquired in the course of investigation. The relevant passage is as follows:

> [33] Any property, record, report or document obtained by the investigation officer pursuant to s. 32(2) of the Act are, by virtue of s. 40 of the Act, admissible as evidence in any proceedings in any court for or in relation to an offence or any other matter under the Act or any offence under any other written law. The Court of Appeal was clearly in error in holding that para. 32 of the investigation officer's affidavit was "purely hearsay". It also erred in ruling that the learned trial judge committed an error in relying "on an affidavit which is not worth the paper it is written on". What had been deposed by these two senior police officers in their affidavits, which were based on their personal knowledge acquired in the course of investigation under s. 32 of the Act, could not be said as purely hearsay.

[65] For the same reasons, we are of the view that the information contained in the statement of the predicate offence investigating officer (Sarjan Zairey Lee) recorded under s. 32(2) of the AMLATFPUAA by ASP Nor Hazwani that was considered by the High Court is not hearsay as argued by the counsel for the appellants.

Conclusion

[66] For all the above reasons, we find no merit in the two issues raised by counsel for the appellants. We also find that the learned High Court Judge finding that the balances in the seized bank accounts of the two appellants are proceeds of unlawful activity does not warrant appellate interference for reasons that we adverted to earlier. We shall therefore dismiss the appeals of both the first and second appellants.